

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
MASTER FILE NO. 07-CV-5944 SC
MDL NO. 1917

IN RE: CATHODE RAY TUBE (CRT) CASE NO. 07-CV-5944 SC
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

CASE NO. 2011-CV-6205 SC

STATE OF FLORIDA, OFFICE OF THE
ATTORNEY GENERAL, DEPARTMENT OF
LEGAL AFFAIRS,

PLAINTIFF,

VS.

LG ELECTRONICS, INC., ET AL.,
DEFENDANTS.

TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 20, 2012

12:00 P.M.

2 EMBARCADERO, SUITE 1500

SAN FRANCISCO, CALIFORNIA

REPORTED BY:

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CSR NO. 12971, RPR

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1 claims, and this would be true under the federal antitrust
2 statutes notwithstanding the fact that there are no damages
3 claims asserted by Florida under those, but the same rules apply
4 both to the Florida Deceptive and Unfair Trade Practices Act and
5 the Florida Antitrust Act. And that is that a claim accrues
6 each time there is an injury to a potential plaintiff, and
7 that's the accrual rule that we described in our brief.

8 There is a tremendous amount of case law that indicates
9 that that's the appropriate accrual rule, and I had thought that
10 we had agreement and that there was no dispute on that fact with
11 Florida. So if you look at Florida's brief that they filed,
12 their opposition brief on the 24th of August at page 6.

13 HON. LEGGE: Yeah.

14 MR. EVERETT: Okay. Under point two you'll see that
15 they indicate in the second paragraph, starting at line 19 that:
16 Accrual of a FDUTPA claim typically occurs when damage is
17 suffered.

18 HON. LEGGE: I'm sorry. What are you reading?

19 MR. EVERETT: I'm sorry. Line 19.

20 HON. LEGGE: Okay.

21 MR. EVERETT: And then: Accrual of an FAA claim, which
22 would be the Florida Antitrust Act, is the same as under the
23 federal antitrust laws pursuant to FAA's harmonization statute.
24 Again, an antitrust action accrues when the alleged conspiracy
25 or other antitrust violation has an impact on the plaintiff.

1 So accrual under these statutes is independent of when
2 plaintiff was on notice or discovered the facts underlying their
3 claim. The notice issue is relevant only to their claim that
4 the statute of limitations were tolled by the fraudulent
5 concealment doctrine. And so that's why we were arguing about
6 notice. And I will acknowledge that there's a dispute between
7 the parties about when Florida was on, at least, inquiry notice.

8 Separately, I think there's a dispute between the
9 parties as to the length of the conspiracy that plaintiffs are
10 alleging, and in particular plaintiffs alleged or argue that
11 they should be permitted to pursue claims that accrue even after
12 December of 2007, i.e., less than four years before they filed
13 their complaint because there was a continuing conspiracy. And
14 our argument in relation to the continuing conspiracy is, quite
15 frankly, that there are no facts alleged in the complaint that
16 would suggest that there was any conspiracy continuing beyond
17 2007 and, in fact, all the allegations in the complaint are to
18 the contrary. And so that's really a separate argument. That's
19 an argument about, not a statute of limitations argument, it's
20 an argument about the sufficiency of the pleadings in general.
21 That the statute of limitations argument relates to claims for
22 damages that accrued before December 9th, 2007.

23 So there's, again, an agreement between the parties that
24 the relevant statute of limitations for damages claims under the
25 two Florida statutes, and the same statute of limitation would

1 presented to them at all. It was simply this order at the end
2 of a decision.

3 So we respectfully would submit that that decision by
4 the Florida Supreme Court is ultimately irrelevant to the
5 question of whether class action tolling can apply in the face
6 of 95.051 and that the case that's included in the D.C.
7 Circuit's decision in the in re Vitamins case that holds that
8 there is no class action or American Pipe tolling of claims
9 under Florida law should apply, meaning that plaintiff can't
10 extend its claims back in time by relying on class action
11 tolling.

12 Again, the statute is very clear. We don't think that
13 it's susceptible to any interpretation that would allow class
14 action tolling to proceed.

15 We separately make an argument, which I'm happy to
16 address, I don't want to go on in too much length, about
17 application of class tolling. Even if Florida allowed it, how
18 class action tolling would apply.

19 HON. LEGGE: No.

20 MR. EVERETT: You don't want to hear about that?

21 HON. LEGGE: No.

22 MR. EVERETT: So the last point that I would ask you to
23 consider is -- so that's for claims before December 9th, 2007.
24 Claims that accrued before December 9th, 2007, we think are
25 facially barred on the face of the complaint.

1 HON. LEGGE: The claims for damages?

2 MR. EVERETT: That's right.

3 HON. LEGGE: Are also claims for equitable relief?

4 MR. EVERETT: I would acknowledge, your Honor, that if
5 there is a continuing harm or continuing activity that could be
6 enjoined, then an injunction could be applied. So really our
7 arguments relating to the statute of limitations are focused on
8 the claims for damages or civil penalties.

9 Now, I query why Florida needs to file a complaint
10 seeking an injunction given the many other complaints that are
11 on file in the courts seeking injunctive relief against the
12 defendants for the same underlying conduct, but let me make one
13 point that I do think there is a disagreement between the
14 parties about and that would be --

15 HON. LEGGE: Hang on one second.

16 MR. EVERETT: Sure.

17 HON. LEGGE: Go ahead, please.

18 MR. EVERETT: So the last point relates to claims for
19 damages after December 9th, 2007. And as to those claims,
20 Florida argues that there was a continuing conspiracy. It
21 argues that conspiracy continues to this day. And what we have
22 asked your Honor to consider is whether there is any factual
23 basis that's alleged in the complaint that would allow the Court
24 to conclude that it is plausible to believe that there was, in
25 fact, a conspiracy continuing beyond 2007.

1 I'm sure your Honor is very familiar with the pleading
2 requirements or the pleading decisions that have come out from
3 United States Supreme Court --

4 HON. LEGGE: Painfully.

5 MR. EVERETT: -- you've gone through a lot of litigation
6 -- the Twombly and Iqbal line of cases, and what those cases
7 very clearly require is that there must be facts alleged in the
8 complaint that provide a plausible basis to believe that the
9 claims are well founded. And here there are no facts alleged
10 about the conduct of defendants after 2007. There are only the
11 facts about defendants. There are actually allegations in
12 paragraph 106 of the amended complaint that purport to allege
13 the periods of time during which defendants, each set of
14 defendants separately, was engaged in conduct that Florida
15 claims violated the antitrust laws. And if you look at those
16 allegations in paragraph 106, they make very clear that there
17 are no allegations about any of the defendants, about any
18 conduct occurring after 2007. And we would respectfully submit,
19 given all of the cases that are proceeding against the
20 defendants, the various investigations that were announced in
21 November of 2007, that it's simply implausible to believe that
22 defendants continued, or putting aside continued, the defendants
23 had a conspiracy after 2007 to fix prices, allocate markets or
24 any of the other conduct that's alleged in the complaint. And,
25 in fact, many of the defendants, including my clients, had long

1 been out of the CRT business before the end of 2007, again
2 making it fairly implausible. So that's our point in relation
3 to the continuing conspiracy.

4 HON. LEGGE: Have you filed a proposed form of order?

5 MR. EVERETT: I don't believe that we have.

6 HON. LEGGE: The order -- suppose I agree with you, the
7 order would still have to preserve, would it not, their claims
8 for injunctive relief?

9 MR. TALADAY: I think potentially, yes, your Honor. May
10 I address that, your Honor.

11 HON. LEGGE: Sure. Go ahead.

12 MR. TALADAY: Your Honor, if you were to agree with us
13 on the statute of limitations issue with respect to the damages
14 and if the only claims remaining for Florida were claims for
15 injunctive relief, I think it would be appropriate for you at
16 that time to consider whether the continuation of the conspiracy
17 had been pled with sufficient clarity and specificity as to just
18 those claims.

19 So, your Honor, I think if you look at the factual
20 allegations that are pled with specificity, they would all
21 predate the filing of the plaintiff's complaint and it would be
22 necessary for them to plead with specificity acts that had
23 posted. I don't think that's occurred, your Honor.

24 And I would ask one other thing, your Honor. You could
25 take notice, I think, of the claims in the other complaints with

1 respect to some of the defendants as to when they stopped doing
2 business because I think this is clear from some of the other
3 complaints as well when you're considering the plausibility of
4 that, your Honor.

5 HON. LEGGE: Where have you argued that in your brief,
6 because the distinction between damages claims and injunctive
7 relief just did not come across to me in the reading of briefs?
8 So I'm plowing new ground here and looking for, not a decision,
9 but a decision path to get to. Where do you argue about that
10 question?

11 MR. EVERETT: So I think fairly we have not argued that
12 distinction specifically. Now, we have made arguments as I
13 explained before and as Mr. Taladay expanded upon that it's
14 implausible to believe that there is any continuing conspiracy
15 after 2007. And so if you take the plaintiff's argument that
16 they need an injunction because of continuing acts of the
17 defendants, then our argument that there's no plausible basis to
18 believe that would by virtue of the plaintiff's argument bar
19 their claims for injunctive relief as well.

20 HON. LEGGE: I'm sort of thinking what these cases are
21 about. I understand for lawyers it's the present state of the
22 market. I would imagine that the State of Florida is really
23 interested in financial recovery rather than injunctive relief.
24 That's up to the State, but I would think that the -- well, I've
25 already said the reality of the market would say that injunction

1 isn't going to do very many people very much good, if any, and
2 it's really money that should be at stake, but that's not my
3 call.

4 MR. TALADAY: Your Honor, I would say, if I might,
5 especially against this group of defendants which I think by
6 large it's clear from the record are no longer involved in the
7 manufacturing of CRT tubes.

8 HON. LEGGE: Well, I think that cuts through a lot of
9 defendants. It's a little hard for me to -- what do I do with
10 that?

11 All right. You want to take a break before you begin or
12 are you ready to begin?

13 MR. WEILHAMMER: I'm ready to begin.

14 HON. LEGGE: For the State of Florida, please.

15 MR. WEILHAMMER: Turning first to the issue of whether
16 or not the statute of limitations is apparent from the face of
17 the complaint looking first at equitable relief. We briefed the
18 case of Wilk vs. The American Medical Association. We think
19 that accurately --

20 HON. LEGGE: Wait a minute. Haven't they pretty much
21 just admitted that this motion they're making is limited to
22 damages claims except for this last argument?

23 MR. WEILHAMMER: That's exactly what I was about to
24 address, but I think that we have to show, you know, the threat
25 of injury.

1 HON. LEGGE: I don't want to overstate this. Am I right
2 about that? That you are admitting that your argument you've
3 been making about the statute of limitations is really
4 applicable only to the damages claims? I shouldn't say only
5 because I think that's really a major part, but limited to the
6 damage claims. And for me to do anything with respect to the
7 injunction claims, I have to analyze the grounds of the adequacy
8 of the allegations for injunctive relief and the plausibility
9 grounds for believing that there's still any damage for the
10 Florida citizens.

11 MR. EVERETT: I think that's right, your Honor. There
12 are separate arguments addressed to the statute of limitations
13 and then to the adequacy of the claims.

14 HON. LEGGE: Go ahead.

15 MR. WEILHAMMER: As to the plausibility, I think if you
16 look at the Wilk case though --

17 HON. LEGGE: I'm sorry?

18 MR. WEILHAMMER: The conspiracy ended in 1980. There
19 was a trial and the judge --

20 HON. LEGGE: What case are you citing?

21 MR. WEILHAMMER: Wilk vs. the AMA on page four of
22 Florida's response.

23 HON. LEGGE: Okay. Go ahead.

24 MR. WEILHAMMER: So even if Florida doesn't show or is
25 unable to show that the conspiracy is still being carried out,

1 not just dismissal of the damages claims but is also dismissal
2 of the injunctive claims, that you've got to give me a little
3 bit more, and in fairness to the State of Florida give both a
4 little bit more about what that argument really is. I can hear
5 you verbalize it, I understand it, but you really haven't given
6 them fair notice. You may have given it to me and I missed it,
7 but I'd like to hear what you really have to say about that.

8 So let's assume that we're talking then only about the
9 claims for equitable forms of relief which I guess are under the
10 Sherman Act and also under the two Florida statutes.

11 MR. WEILHAMMER: That's correct.

12 HON. LEGGE: Okay. Why those should be dismissed and
13 they, of course, would have an opportunity to reply.

14 MR. TALADAY: Your Honor, there are, I suppose, two ways
15 to do that. One is that your Honor could rule on the claims
16 with respect to damages with leave for us to replead with
17 respect to injunctive relief or we could plead with respect to
18 the claims for injunctive relief before your Honor rules. I
19 just wanted to --

20 HON. LEGGE: No, I'd like a brief now, or not now, as
21 soon as you can reasonably prepare one, telling me why your
22 12(b)(6) motion should apply to the claims for equitable relief
23 as well as claims for damages and have an opportunity to reply,
24 then I think I have it put together and make whatever rulings I
25 want to make. I don't know what they are yet, but then both

1 things will be fairly between -- among all of us.

2 MR. WEILHAMMER: I think we're clear on this, but in the
3 motion they did argue that it was subject to a four-year statute
4 of limitations. This argument wasn't raised in the motion at
5 all, but we can move forward on that.

6 If I can just clarify a couple of points real quick.

7 HON. LEGGE: Sure.

8 MR. WEILHAMMER: The CID sent by the State of Florida,
9 I'm aware of ones that were issued in 2011. So this wasn't a
10 situation where they were issued in 1995 and we just sat on what
11 we received. I wanted to make that clear that this was 2011,
12 unless they received other ones that I don't know about.

13 The second point is we highlighted the severity of such
14 a ruling where fraudulent concealment is not recognized. That
15 is to stay a conspiracy began in 1995. What defendants can do
16 is hide the conspiracy and then come 1999, they're free and
17 clear of all Florida causes of action and that's a very severe
18 result, honestly.

19 HON. LEGGE: All right. So how long do you want to
20 brief?

21 MR. EVERETT: Maybe two weeks from today.

22 HON. LEGGE: What's the date? Takes us to October the
23 4th.

24 MR. EVERETT: That's fine.

25 HON. LEGGE: What you're briefing is your brief

1 regarding why the injunctive relief portions of the amended
2 complaint should be dismissed on 12(b)(6) as well as the damages
3 claims based on statute of limitations.

4 MR. EVERETT: Yes, your Honor.

5 HON. LEGGE: How long after that do you want to reply?

6 MR. WEILHAMMER: We can respond -- what's the normal
7 time? Two weeks?

8 HON. LEGGE: Two weeks, okay. That would take us to the
9 18th, October 18th. On that date, I will take the motions under
10 submission.

11 MR. WEILHAMMER: Any page limitations?

12 HON. LEGGE: Well, I'm not going to give you a page
13 limitation. I think you were both pretty wordy in your briefing
14 today. We've narrowed the question down pretty much, so I don't
15 think I need page limitations. Tell me what I need to know.
16 Your burden is easier than theirs in terms of it's easier to
17 express and state why I should issue a dismissal.

18 Anything further?

19 MR. EVERETT: No, your Honor.

20 HON. LEGGE: All right. Thank you very much. Very nice
21 job in both briefing and the oral arguments. Thank you.

22 We'll go off the record.

23 (Proceedings concluded at 1:15 p.m.)
24
25

1 STATE OF CALIFORNIA)
)
2 COUNTY OF SAN FRANCISCO)

3

4 I, Ruby Sanchez, a Certified Shorthand Reporter, do
5 hereby certify:

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15

16 Dated: October 2, 2012

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